

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK SHAUN LOVEDAY,

Petitioner,

No. CIV S-05-0105 GEB DAD P

vs.

M. YARBOROUGH, Warden,

Respondent.

ORDER

_____/

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 6, 2005, respondent filed a motion to dismiss and argued that one of petitioner's six claims is unexhausted.¹ Petitioner has not filed an opposition to the motion. Local Rule 78-230(m) provides in part: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion"

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¹ Petitioner is advised that he may file a motion for a stay and abeyance of his mixed petition. See Rhines v. Weber, 544 U.S. 269 (2005) and Jackson v. Roe, 425 F.3d 654, 661 n. 10 ("We note in passing that because Rhines has now authorized stays of mixed petitions, albeit in limited circumstances, the three-step procedure [amending mixed petition, filing motion for stay and abeyance, and filing motion for leave to amend when unexhausted claims are exhausted] may fall into disuse.")

1 Accordingly, IT IS HEREBY ORDERED that within twenty days from the service
2 of this order, petitioner shall file his opposition or statement of non-opposition to respondent's
3 December 6, 2005 motion to dismiss. Petitioner's failure to comply with this order will result in
4 a recommendation that this action be dismissed without prejudice.²

5 DATED: April 21, 2006.

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8 _____
9 DALE A. DROZD
10 UNITED STATES MAGISTRATE JUDGE

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25 ² The court makes no determination as to whether any habeas petition filed at a later date
26 will be timely under the statute of limitations. See 28 U.S.C. § 2244(d)(1).